

SERVICE DATE – JANUARY 9, 2017

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 6 (Sub-No. 486X)

BNSF RAILWAY COMPANY—ABANDONMENT
EXEMPTION—IN FULTON COUNTY, ILL.

Decided: January 6, 2017

BNSF Railway Company (BNSF) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon 14.5 miles of rail line between milepost 52.2 in Farmington and milepost 66.7 in Dunfermline, in Fulton County, Ill. Notice of the exemption was served and published in the Federal Register on January 24, 2013 (78 Fed. Reg. 5,244). The exemption became effective on May 27, 2013.¹

Notice of Interim Trail Use

By decision and notice of interim trail use or abandonment (NITU) served on May 24, 2013, the proceeding was reopened, a 180-day period was authorized permitting the Canton Park District of Canton, Ill. (Canton Park), to negotiate with BNSF for interim trail use, and a public use condition was imposed. By a series of decisions, the NITU negotiation period was extended until November 22, 2016. On November 21, 2016, Canton Park filed a request to extend the NITU negotiating period until May 22, 2017.² By filing dated November 30, 2016, BNSF notified the Board that it did not object to an extension of the NITU negotiation period.

Where, as here, the carrier has not consummated the abandonment and is willing to continue trail use negotiations, the Board retains jurisdiction, and the NITU negotiating period may be extended. See Rail Abans.—Use of Rights-of-Way as Trails—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987). Under the circumstances, further extension of the

¹ The exemption was scheduled to become effective on February 23, 2013; however, the effective date was stayed due to the filing of a formal expression of intent to file an offer of financial assistance (OFA) under 49 U.S.C. § 10904 and 49 C.F.R. § 1152.27(c)(2). No OFA was filed by the deadline, and the OFA process was subsequently terminated. BNSF Ry.—Aban. Exemption—in Fulton Cty., Ill., AB 6 (Sub-No. 486X) (STB served May 24, 2013).

² By decision served on March 21, 2016 (March 2016 Decision), the Board, at the request of Canton Park, reduced the portion of the line subject to the NITU to be between milepost 52.2 and milepost 64.65, rather than the original endpoint of milepost 66.7. BNSF did not object to Canton Park's request.

negotiating period is warranted. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Vill. v. Mo. Pac. R.R., 95 F.3d 654, 659 (8th Cir. 1996). An extension of the NITU negotiating period will promote the establishment of trail use and rail banking consistent with the Trails Act. Accordingly, the NITU negotiating period will be extended to May 22, 2017.

Historic Preservation Condition

By decision served on March 4, 2013, the Board imposed a historic preservation condition requiring BNSF to: (a) retain its interest in, and take no steps to alter, the historic integrity of all historic properties including sites, buildings, structures, and objects within the project right-of-way that are eligible for listing or are listed in the National Register of Historic Places until the Section 106 process of the National Historic Preservation Act, 16 U.S.C. § 470f (NHPA),³ has been completed; (b) report back to the Board's Office of Environmental Analysis (OEA) regarding any consultations with the Illinois State Historic Preservation Office (SHPO) and the public; and (c) not file a consummation notice or initiate any salvage activities related to abandonment (including removal of tracks and ties) until the Section 106 process has been completed and the Board has removed the condition.

In a supplemental final environmental assessment dated December 8, 2016, OEA states that BNSF submitted a letter on November 30, 2016, requesting that the Section 106 condition be modified to include only the stone arch bridge at milepost 52.86. According to BNSF, this bridge is the only structure on the line that has been deemed eligible for listing in the National Register. BNSF's letter included the SHPO's concurrence that the proposed modification would have no adverse effect on National Register eligible resources. Although BNSF is still negotiating an interim trail use agreement with Canton Park District, BNSF asserts that the agreement would include preservation language specific to the bridge at milepost 52.86.⁴ After a review of BNSF's filing, OEA now recommends that the Board modify the existing Section 106 condition to remove from that condition the line between mileposts 52.2 and 64.65 and include only the stone arch bridge at milepost 52.86 that is eligible for listing in the National Register.⁵ Therefore, this proceeding will be reopened and the previously imposed condition will be

³ The NHPA was recodified in December 2014 to Title 54 and is now at 54 U.S.C. § 306108.

⁴ The March 2016 Decision, among other things, modified the Section 106 condition to exclude, and therefore permit abandonment of, the segment of rail line between milepost 64.65 and milepost 66.7 because OEA determined, and the SHPO concurred, that abandonment of that segment of rail line would have no adverse effect on National Register eligible resources.

⁵ Where a historic condition is needed only for a portion of the rail line or for particular structures on the rail line, the Board may modify the condition to salvage the rest of the line that is not affected by that condition. See Consummation of Rail Line Abans. That Are Subject To Historic Pres. & Other Envtl. Conditions, EP 678 (STB served Apr. 23, 2008).

modified as follows: BNSF will be required to: (a) retain its interest in and take no steps to alter the historic integrity of the stone arch bridge within the project right-of-way (the Area of Potential Effect) at milepost 52.86 that is eligible for listing or listed in the National Register of Historic Places until the Section 106 process of the National Historic Preservation Act, 54 U.S.C. § 306108, has been completed; (b) report back to OEA regarding any consultations with the SHPO and the public; and (c) not file a consummation notice or initiate any salvage activities related to abandonment (including removal of tracks and ties) of the stone arch bridge at milepost 52.86 until the Section 106 process has been completed and the Board has removed this condition.

This action will not significantly impact the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. Canton Park's request for a further extension of the NITU is granted for 180 days, until May 22, 2017.
3. The Section 106 historic preservation condition imposed in the March 4, 2013 decision is further modified as discussed above.
4. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.